

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

STANLEY F. FROMPOVICZ,
Plaintiff,

CIVIL ACTION

v.

**NIAGARA BOTTLING, LLC, ICE RIVER
SPRINGS WATER CO, INC.,
CROSSROADS BEVERAGE GROUP AND
JAMES J. LAND, JR.,**
Defendants.

NO. 18-54

ORDER

AND NOW, this 18th day of September, 2018, upon consideration of Defendants Ice River Springs Water Co, Inc. (“Ice River”), Crossroads Beverage Group (“Crossroads”), and James J. Land Jr.’s (“Land”) Motion to Dismiss (ECF No. 33), Plaintiff’s Response in Opposition thereto (ECF No. 35), the Reply in Further Support thereof (ECF No. 36), as well as Defendant Niagara Bottling, LLC’s (“Niagara”) Motion to Dismiss (ECF No. 34), Plaintiff’s Response in Opposition thereto (ECF No. 35), the Reply in Further Support thereof (ECF No. 37), **IT IS HEREBY ORDERED** as follows:

(1) Defendants Ice River, Crossroads, and Land’s Motion to Dismiss (ECF No. 33) is **GRANTED IN PART AND DENIED IN PART**.

- a. Defendant’s Motion to Dismiss Count One (Lanham Act) is **GRANTED IN PART AND DENIED IN PART**. Count One is dismissed against Defendant Crossroads **WITH PREJUDICE**. Defendants’ Motion to Dismiss Count One against Defendants Land is **DENIED** on the theory of commercial harm and on the theory of commercial disparagement. Defendants’ Motion to Dismiss Count One against Defendants Ice River is **GRANTED IN PART AND DENIED IN PART**. Count One is dismissed against Defendant Ice River **WITH PREJUDICE** on the theory of commercial disparagement. Defendants’ Motion to Dismiss Count one on a theory of commercial harm is **DENIED**.
- b. Defendants’ Motion to Dismiss Plaintiff’s claim for injunctive relief is **DENIED**.

- c. Defendants Ice River, Crossroads, and Land's Motion to Dismiss Count Two (unfair competition) is **GRANTED**. Count Two is dismissed against Defendants Ice River, Crossroads, and Land **WITH PREJUDICE**.

(2) Defendant Niagara's Motion to Dismiss (ECF No. 34) is **GRANTED IN PART AND DENIED IN PART**.

- a. Defendants' Motion to Dismiss Count One against Defendants Niagara is **DENIED** on the theory of commercial harm and on the theory of commercial disparagement.
- b. Defendant's Motion to Dismiss Plaintiff's claim for injunctive relief is **DENIED**.
- c. Defendant's Motion to Dismiss Count Two (unfair competition) is **GRANTED**. Count Two is dismissed **WITH PREJUDICE** against Niagara.

BY THE COURT:

/S/Wendy Beetlestone, J.

WENDY BEETLESTONE, J.